***THE HONOURABLE SRI JUSTICE B.PRAKASH RAO**

+WRIT PETITION No.3589 OF 2002.

%17-12-2004

C.Narayana

….Petitioner

Vs.

$ 1.The Industrial Tribunal II, Hyderabad

and another.

….Respondents

! Counsel for the Petitioner: Mr.V.Srinivas

^ Counsel for the Respondent No.1: G.P. For Labour

Counsel for the Respondent No.2:Mr.V.T.M. Prasad,
Standing counsel for APSRTC.

<Gist:

>Head Note:

? Cases referred:

1.1987 (2) L.L.J.491

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 3589 of 2002

Between:

C.Narayana son of Panju, aged about 48 years

Resident of House No.18-8-224/5/118, Santhosh

Nagar, Hyderabad.

..... PETITIONER

AND

1.The Industrial Tribunal II, Chandravihar
Complex, Exhibition Grounds Road, Hyderabad.

2.The Depot Manager, APSRTC, Midhani

Depot, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, a Certiorari or any other appropriate order or orders, direction or directions to quash the award of the 1st respondent in I.D.No.258 of 2000 dated 12-9-2001 and to direct the 2nd respondent to reinstate the petitioner with full back wages and all other consequential benefits.

Counsel for the Petitioner: MR.V.SRINIVAS

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: MR.V.T.M.PRASAD, STANDING COUNSEL FOR APSRTC

The Court made the following:

ORDER

Heard the learned counsel for the petitioner and also Sri VTM Prasad, learned Standing Counsel appearing on behalf of the 2nd respondent.

The petitioner herein, who has been working as driver with the respondent corporation files this Writ Petition *inter alia* seeking to assail the award in I.D.No.258 of 2000 dated 12-9-2001 passed by the 1st respondent herein rejecting the reference made at the instance of the petitioner in regard to the orders of removal from service by the Corporation in its proceedings, dated 19-11-1997.

In this case, the petitioner, who was involved in an accident which occurred on 18-1-1997 was not only prosecuted on criminal side, but also on departmental side. On criminal side, he was initially convicted in C.C.No.140 of 1997, by judgment dated 23-7-1998 on the file of the XII Metropolitan Magistrate, Hyderabad. Thereafter, the appeal at the instance of the petitioner was allowed and the petitioner was acquitted as per the judgment in Criminal Appeal No.189 of 1998, dated 16-10-1998 on the file of the VI Additional Metropolitan Sessions Judge, Hyderabad. In the meanwhile departmental proceedings were initiated against the petitioner. Aggrieved against the said orders, the petitioner raised a dispute before the 1st respondent in I.D.No.258 of 2000, which was ultimately dismissed on 12-9-2001. From the said proceedings, initially it was held that the enquiry is vitiated. Thereafter an objection was sought to be raised to substantiate the case by producing evidence.

On behalf of the Management only one witness was examined as M.W.1 and marked Exs.M1 to M13 which also includes the rough sketch of the scene of

offence. However, no copies of judgment of either the trial Court or appellate Court are filed, except a charge sheet, which has been marked as Ex.M9. The petitioner was also examined as W.W.1.

Placing reliance on the evidence of MW1 and Ex.M1, the rough sketch of scene of offence and Ex.M9, the charge sheet, the Tribunal held that there is sufficient proof of mis-conduct on the part of the petitioner for the charges levelled against him. Hence the I.D. was ultimately dismissed.

Mr.Srinivas, the learned counsel appearing on behalf of the petitioner submits that the petitioner was acquitted in the criminal proceedings and further departmental proceedings have been initiated against him, but, no evidence has been let in, except the sole testimony of MW1 and the rough sketch of the scene of offence under Ex.M1 which itself shows that the petitioner is not guilty. He also placed reliance on the judgment in **W*orkmen of Tanganagaon Tea Estate v Management of Tanganagaon Tea Estate,*** which also reiterates the principle that once it is held that the Departmental proceedings are vitiated, any material subsequently produced cannot be relied upon.

The learned Standing Counsel appearing on behalf of the respondent submits that having regard to the evidence available on record including the evidence in the departmental enquiry, it was held that the petitioner himself is responsible for rash and negligent driving and hence the Labour Court was right in rejecting the petitioner's request.

Considering the submissions made and also on perusal of the record, the sole question that arises for consideration in this case is whether the departmental enquiry by the Labour Court on reference is vitiated.

The Court can rely on the evidence, which has been produced during the departmental enquiry. There is no dispute of the fact that the petitioner has

been working as driver and while he was driving the vehicle, the same was involved in an accident that resulted in filing a criminal case and initially he was convicted by the Magistrate. Thereafter, on appeal, he was acquitted. Further, in the departmental proceedings, the petitioner was removed from service. Thereafter, when the matter had come up in the Labour Court, initially, the Labour Court has held that the departmental proceedings are vitiated and therefore, it is desirable for both sides to substantiate their case by producing independent evidence. However, except examining MW1 and marking Exs.M1 to M13, which includes rough sketch of the scene of offence and the charge sheet, no other evidence has been produced. In spite of the same, the Labour Court has relied on the evidence which has been produced before the departmental proceedings and held that the petitioner is responsible for such mis-conduct. It is now well established that the burden is cast on the respondent corporation to prove the mis-conduct of the petitioner. In view of the fact that the departmental enquiry was vitiated, it necessitates the corporation to substantially prove not only the charge, but also the correctness of the other proceedings. The respondent has not produced evidence to assess or to blame the petitioner in respect of the charge made against him, more so, when the criminal Court has acquitted him and this circumstance will certainly go in favour of the petitioner. Thus, the Labour Court was not right in accepting or once again placing reliance on the evidence, which is a part of the proceeding in the departmental enquiry. Except this material, there is nothing on record to hold that the petitioner is guilty of the charge levelled against him.

In the circumstances, the Writ Petition is allowed and the impugned order is set aside. The petitioner shall be reinstated with full back wages and continuity of service with all other consequential benefits. No costs.

17-12-2004.

Hsd

Note: L.R. copy to be marked.

B/o

Hsd

That Rule Nisi has been made absolute as above.

Witness, the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Friday, the Seventeenth day of December, 2004.

Asst. Registrar

One Fair copy to the Hon'ble Sri Justice B.Prakash Rao (For his Lordship's kind perusal)

To

1.The Industrial Tribunal II, Chandravihar
Complex, Exhibition Grounds Road, Hyderabad.

2.The Depot Manager, APSRTC, Midhani

Depot, Hyderabad.

3.Eight L.R. copies.

4.2 C.Cs to G.P. for Labour, High Court of A.P. High
Court buildings, Hyderabad (OUT)

5.The under Secretary, Union of India, Ministry of
Law, Justice and Company Affairs, New Delhi.

6.The Secretary, A.P. Advocates Association Library,
High Court buildings, Hyderabad.

7.2 C.D. copies.